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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services -- Foreign Ownership Waiver Petitions	)	DOCKET FILE COPY ORIGINAL

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, MAP Mobile Communications, Inc., ("MAP"),[1] by its attorneys, hereby respectfully seeks reconsideration and clarification of the June 12, 1995, Order adopted by the Wireless Telecommunications Bureau ("Bureau") in the above-captioned proceeding.[2] MAP requests the Bureau to reconsider that aspect of its decision permitting licensees granted waivers in accordance with Section 332(c)(6) of the Communications Act to acquire additional licenses in the same service using the approved ownership structure only

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[1] MAP is a private carrier paging licensee owned and controlled by non-U.S. citizens. MAP Paging Co., ("MAP Paging"), a wholly-owned subsidiary of MAP is the operator of a 929.9875 MHz paging system. In addition, MAP and MAP Paging are the licensees of various 929 MHz facilities and 72-76 MHz control link frequencies.

[2] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services -- Foreign Ownership Wavier Petitions, GN Docket No., 93-252, DA 95-1303 (June 12, 1995) [hereinafter "*Order*"].

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until August 10, 1996. MAP asks the Bureau to allow licensees granted waivers in accordance with Section 332(c)(6) to acquire additional licenses in the same service without an arbitrary termination date, provided that the licensee's approved ownership structure is maintained. In addition, MAP requests the Bureau to clarify that approved non-U.S. shareholders in the waiver grantees may sell their equity ownership interest to other existing and approved non-U.S. shareholders in the same entity or back to the entity itself, provided that the control of the waiver grantee is not changed.

MAP submits that grant of these requests will assist affected licensees by easing the applicable regulatory requirements and affording licensees the flexibility necessary to continue operating efficiently. In addition, grant of MAP's requests will serve the public interest and assist the Commission by eliminating unnecessary burdens on the agency's licensing and administrative processes, preventing needless delays in the provision of communications services, and ensuring that those entities with the greatest interest in the provision of communications services are allowed to continue controlling the day-to-day operations of licensed facilities.

I. Background

The Bureau's Order addresses thirty-three requests for waiver filed pursuant to Section 332(c)(6) of the Communications Act.[3] Section 332(c)(6) allows private land mobile licensees subject to reclassification as common carrier commercial mobile radio

[3] 47 U.S.C. § 332(c)(6)(A), (B).

service ("CMRS") operators to retain the level of foreign ownership that they had as of May 24, 1993, if they filed a petition for waiver within six months after the date of enactment of the Omnibus Budget Reconciliation Act[4] (*i.e.*, by February 10, 1994).

MAP timely filed a request for waiver in accordance with this procedure. MAP's waiver is one of the thirty-three requests ruled on in the Bureau's Order. The Bureau concluded that MAP and several other petitioners had satisfied the informational showings and certifications required by the Budget Act and the Commission's rules and policies.[5] In addition, the Bureau stated that permitting these entities to retain the foreign ownership that existed as of May 23, 1994, will help ensure a smooth transition to CMRS regulation.[6] Accordingly, the Bureau grandfathered all foreign ownership that lawfully existed in the affected petitioners, including MAP, as of May 24, 1993. Consistent with the Budget Act's requirements, the Bureau stated that the extent of

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[4] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(c)(2)(B), 107 Stat. 312, 387-92 ("Budget Act").

[5] Specifically, petitioners were required to identify all foreign interests in the licensee as of May 24, 1993, that would, absent a waiver, be subject to the foreign ownership restrictions contained in Section 310(b). Petitioners were required to identify all foreign persons or entities holding an ownership interest in the licensee and the percentage of ownership interest of each and to identify all foreign partners, officers, and directors regardless of whether they hold an ownership interest. In addition, petitioners were required to certify that the identify and percentages of each listed component of foreign ownership were unchanged since May 24, 1993, and that each listed officer, director, or partner continues to hold the same position. Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1056, 1057-58 (1994) (First Report and Order).

[6] *Order* at ¶ 8.

foreign ownership in the waiver grantees may not be increased beyond May 24, 1993, levels and that any subsequent transfers of ownership to any other person in violation of Section 310(b) are prohibited.[7]

The Bureau held that the waiver grants will extend to licenses acquired in the same service by the petitioners between May 24, 1993, and August 10, 1996, the expiration date of the transition period available to certain licensees reclassified as CMRS providers.[8] Accordingly, the Bureau stated that, until August 10, 1996, waiver grantees may acquire additional licenses in the same service using the ownership structure approved by the waiver. The Bureau added, however, that the requirements of Section 310(b) will apply to any licenses acquired by the petitioners after August 10, 1996.[9]

II. The Bureau Should Allow Licensees Granted Waivers in Accordance with Section 332(c)(6) To Acquire Additional Licenses in the Same Service Without An Arbitrary Termination Date, Provided that the Licensee's Approved Ownership Structure is Maintained.

As mentioned, MAP seeks reconsideration of that aspect of the Bureau's Order allowing licensees granted waivers in accordance with Section 332(c)(6) and that maintain their approved ownership structure only until August 10, 1996, to acquire additional licenses in the same service. As discussed in detail below, the relief

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7 *Id.* at ¶ 9. *See also* 47 U.S.C. §§ 332(c)(6)(A),(B).

8 *Order* at ¶ 10.

9 *Id.*

provided in the Order leads to an inconsistent and unduly burdensome result that, in MAP's view, is contrary to Section 332(c)(6) and the legislative history of the Budget Act. Accordingly, MAP requests the Bureau to amend its decision to allow licensees granted waivers under Section 332(c)(6) simply to continue being able to acquire additional licenses in the same service so long as the licensee's approved ownership structure is maintained.

The Bureau's Order provides that, until August 10, 1996, waiver grantees that retain their approved ownership structure may acquire additional licenses in the same service. The Order states that all licenses acquired after August 10, 1996, will, however, be subject to the foreign ownership restrictions set forth in Section 310(b) of the Communications Act. In the case of those waiver grantees that have alien officer or director or with more than 20 percent of their equity owned or voted by aliens, their representatives, or any corporation organized under the laws of a foreign country, Section 310(b)(3) of the Act will serve to prohibit the acquisition of any additional licenses in the same service after the August 10, 1996, deadline.[10] As a result, these grantees, including MAP, will be eligible to hold some licenses but ineligible to acquire and hold any new licenses after the August 10, 1996, cut-off. The only way licensees

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[10] Section 310(b)(3) of the Communications Act prohibits the grant of radio licenses in the broadcast, common carrier, aeronautical en route, and aeronautical fixed services to aliens or to corporations evidencing the following levels of alien ownership or control: (1) an entity that has any alien officer or director; or (2) an entity in which more than 20 percent of the equity is owned or voted by aliens, their representatives, a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country.

subject to Section 310(b)(3) will be able to continue acquiring and modifying new station sites is if they create a subsidiary license holder approved by the Commission in accordance with Section 310(b)(4) of the Communications Act.[11]

MAP does not believe that this result, which unnecessarily complicates the operations of reclassified licensees, is what Congress intended when it enacted Section 332(c)(6). The Section 332(c)(6) waiver procedure is designed to ease the burden on reclassified Part 90 licensees as they transition to CMRS regulation. To this end, the legislative history indicates that the waiver procedure is intended to prevent reclassified entities from being forced to divest themselves of their foreign ownership.[12] Contrary to the statute's intent, the Bureau's Order in effect requires licensees such as MAP to reorganize and once again seek FCC approval if they are to acquire any new licenses after the cut-off date. Significantly, there is nothing in Section 332(c)(6) itself or the

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[11] Section 310(b)(4) governs the ownership or positional interests of aliens in entities that directly or indirectly control a broadcast, common carrier, aeronautical en route, or aeronautical fixed licensee. Under Section 310(b)(4), "if the Commission finds that the public interest will be served by the refusal or revocation of such license," parent companies that directly or indirectly control a licensee are barred from having: (1) an alien officer; (2) a Board of Directors in which alien membership exceeds 25 percent; or (3) more than 25 percent of the capital stock (or equity interest) owned of record or voted by aliens, their representatives, a foreign government or representative hereof, or by any corporation organized under the laws of a foreign country. Thus, the Commission could allow MAP Mobile to continue to function as a holding company. All licenses, however, would need to be held by a subsidiary such as MAP Paging. Unlike the current treatment under the waiver, the subsidiary could not have non-U.S. officers or directors.

[12] H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 495 (1993), *reprinted in* 1993 U.S. Code Cong. & Admin. News 1184.

legislative history of the Budget Act that requires or supports implementation of the August 10, 1996, cut-off date imposed by the Bureau. Section 332(c)(6) expressly prohibits "subsequent transfers of ownership to any other person in violation of Section 310(b),"[13] but it says nothing about prohibiting the acquisition of future licenses that, absent waiver, would violate Section 310(b).

To best accomplish the purpose of Section 332(c)(6) -- which is to grandfather those persons holding foreign ownership as of the May 24, 1993, date -- waivers granted in accordance with Section 332(c)(6) should simply continue in effect as applied to all additional sites or modifications in the same service, provided that the waiver grantee's approved ownership structure is maintained. Only if implemented in this manner, without a cut-off date, will the waiver grant assist the continued operations of reclassified licensees. Limiting the waivers to licenses acquired before August 10, 1996, prohibits licensees from adding new sites and making modifications unless they go through the process of creating a subsidiary solely for the purpose of skirting Section 310(b)(3).

Furthermore, the procedure set forth in the Bureau's Order will result in unnecessary paperwork for licensees and the Commission's staff, and will create needless delays for waiver grantees wishing to acquire additional licenses after the August 10, 1996, cut-off date. Under the Commission's existing practices, licensees seeking approval of foreign ownership in accordance with Section 310(b)(4) of the Act

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[13] 47 U.S.C. § 332(c)(6)(B).

are required to file individual requests for declaratory ruling to the effect that the existence of each parent company's non-U.S. ownership is in the public interest. It is particularly onerous to require Section 332(c)(6) waiver grantees to undergo this process in view of the fact that the Bureau has already made essentially the same public interest determination in the context of the Section 332(c)(6) waiver process. In addition, requiring waiver grantees to secure a Section 310(b)(4) public interest determination unnecessarily hampers their ability to modify and expand existing operations as dictated by business and consumer demands.

Moreover, MAP is a small business whose current operations, including the day-to-day management and control of its private land mobile facilities, are run by its owners. In MAP's view, it is sound public policy for the Commission to continue to encourage this direct level of involvement and regulatory accountability. Although public policy reasons may exist under Section 310(b) calling for a separation of business ownership and licensee responsibilities, Section 332(c)(6) creates an explicit exception to this requirement by authorizing the Commission to waive the requirements of Section 310(b)(3) where reclassified land mobile licensees are concerned. Accordingly, MAP asks the Bureau to allow those entities granted waivers under Section 332(c)(6) to continue being able to acquire new licenses in the same service, provided that the ownership structure of the waiver grantees does not change.

III. MAP Requests the Bureau to Clarify that Approved Non-U.S. Shareholders in the Waiver Grantees May Sell Their Equity Ownership Interest To Other Existing and Approved Non-U.S. Shareholders in the Same Entity or Back To the Entity Itself, Provided that the Control of the Waiver Grantee is not Changed.

As mentioned, MAP also asks the Bureau to clarify that approved non-U.S. shareholders in entities granted waivers under Section 332(c)(6) may sell their equity ownership to other existing and approved non-U.S. shareholders in the same entity or back to the entity itself, provided that the control of the waiver grantee is not changed. For example, a situation may arise in which one of the non-controlling shareholders listed in MAP's waiver request wishes to sell his or her shares to another listed shareholder that also holds and, after the proposed sale of shares would continue to hold, a non-controlling interest in the licensee. Similarly, one of the current owners may need to cash in its shares by selling them to the corporation. Such transfers of shares among approved shareholders or back to the corporation are fully consistent with the Commission's policies and with Section 332(c)(6) because they will not increase the level of non-U.S. ownership that existed in the licensee as of May 24, 1993, nor will they introduce any new, unapproved non-U.S. owners. Accordingly, MAP asks the Bureau explicitly to clarify that such a transfer among shareholders is permissible in accordance with the Bureau's waiver grants.

IV. Conclusion

For the reasons set forth above, MAP Mobile Communications, Inc., asks the Bureau to reconsider its decision to allow licensees granted waivers in accordance with Section 332(c)(6) to acquire additional licenses in the same service using the approved ownership structure only until August 10, 1996. MAP submits that licensees and the Commission will benefit if waiver grantees are permitted to continue to acquire additional licenses in the same service, provided that the licensees' approved ownership structure is maintained. In addition, MAP asks the Bureau to clarify that approved non-U.S. shareholders in the waiver grantees may sell their equity ownership interest to other existing and approved non-U.S. shareholders in the same entity or back to the entity itself, provided that the control of the waiver grantee is not changed. MAP believes that the adoption of its requests for reconsideration and clarification will serve the public interest by removing unnecessary regulatory restrictions and requirements, thereby reducing the burden on licensees and the Commission staff.

Respectfully submitted,

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